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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
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12 UNITED STATES OF AMERICA, )  
13 Plaintiff, )  
14 v. )  
15 DENNIS CYRUS, JR., )  
16 Defendant. )  
17

No. CR 05-00324 MMC

~~PROPOSED~~ ORDER REGARDING  
OUT-OF-DISTRICT TAINT TEAM

18 Having reviewed the Government's Notice of Proposed Out-of-District Taint Team and  
19 prior filings relating to Taint Team issues, and having heard from both parties <sup>at the hearing held</sup> ~~on these issues in~~  
December 10, 2008  
20 ~~open court~~, IT IS HEREBY ORDERED that:

21 1. The Taint Team shall consist of two Assistant United States Attorneys from the  
22 Southern District of California, specifically AUSAs Todd Robinson and Josh Green (the "Taint  
23 Team").

24 2. The following restrictions will apply to all documents, records, and information  
25 disclosed by the defendant to the Taint Team that relate to Rule 12.2 examinations of the  
26 defendant, as well as all documents, records, and information obtained or developed by any  
27 expert working with the Taint Team regarding the Rule 12.2 examinations of defendant:

28 a. The documents, records, and information shall be disclosed only to (i) the

1 Taint Team; (ii) additional individuals in the United States Attorney's Office (other than the  
2 Northern District) and in the Department of Justice in Washington, D.C., not connected to the  
3 provided such disclosure is first approved by the Court, and  
4 trial team; and (iii) any expert(s), or co-workers of any expert(s), working with the individuals  
5 identified in this sub-paragraph.

6 b. The foregoing documents, records, and information regarding the  
7 examinations of the defendant will not be disclosed, directly or indirectly, by any authorized  
8 individual to: Assistant United States Attorneys William Frentzen, Robert David Rees, Jim  
9 Chou, or Brian Stretch; First Assistant United States Attorney David L. Anderson; United States  
10 Attorney Joseph P. Russoniello; or to any other attorney, staff member, agent, expert or  
11 consultant working for or with them (the "Prosecution Team") in connection with the  
12 prosecution of this case during the period the firewall is in effect.

13 c. The foregoing documents, records, and information shall be used by each  
14 authorized individual solely for the purpose of this case. No authorized individual may divulge  
15 the documents, records, or information to anyone who is not an authorized individual during the  
16 period the firewall is in effect.

17 d. Submissions to the Court referring to the foregoing documents, records, or  
18 information shall be (i) filed at least temporarily under seal, and (ii) served only on defense  
19 counsel and the Taint Team.

20 e. Each authorized individual shall file, under seal, a statement under oath  
21 which represents that he or she has read a protective order reflecting the terms under which the  
22 Taint Team and all Authorized Individuals must operate and which recognizes that a willful  
23 violation of it may be deemed civil and/or criminal contempt.

24 f. If an authorized individual learns of a possible violation of this order, he or  
25 she shall promptly inform the Court.

26 g. If, at any time during which the firewall is in effect, the Taint Team  
27 believes that the information produced to them need not be protected by the firewall, they may  
28 petition the Court for review pursuant to the procedure in subparagraph "d" above for a  
determination whether the information should be protected by the firewall according to the terms

1 of this stipulation.

2 h. The firewall shall remain in effect until otherwise ordered by the Court.  
3 Following notification by defendant's counsel to the Taint Team regarding whether any, and  
4 what, expert evidence produced to the Taint Team the defense will present in the penalty phase  
5 of the trial, the Taint Team will then reveal the information produced to them by the defense and  
6 developed by the Government's experts and related Taint Team's investigation to any other  
7 Government attorney or employee. If, based on the notice provided by the defendant after any  
8 guilty verdict, the defendant chooses not to present any particular expert evidence that was  
9 produced to the Taint Team, then the Taint Team shall seal said evidence and shall not disclose  
10 said evidence to the Prosecution Team until further order of the Court. If the Taint Team  
11 believes that the evidence should nonetheless be available to any other Government attorney or  
12 employee, the Taint Team will petition the Court according to the procedure in subparagraph "d"  
13 above for a determination whether the evidence in question should be unsealed.

14 3. The Taint Team will coordinate with the defense regarding the protection of  
15 defendant Cyrus's right of access to counsel during any governmental mental health  
16 examinations conducted under Federal Rule of Criminal Procedure 12.2(c).

17 4. The Taint Team will be responsible for timely providing the defense the  
18 video/audio record of the governmental FRCP 12.2(c) examination within the time period  
19 ordered by the Court.

20 5. The Taint Team will be responsible for timely informing the defense about the  
21 nature and scope of the governmental examination, and for communicating with the defense  
22 about any objections to the procedures or methodologies that the Government's expert(s) propose  
23 to use in conducting their examination (including any objection to specific tests or testing  
24 procedures suggested/requested by the Government and its expert(s)).

25 6. The Taint Team will be responsible for providing the defense timely notice of the  
26 identity and background of the Government's examiner(s).

27 7. The Taint Team will be designated as the governmental litigation team on "nature  
28 and scope" issues as these may be defined after the completion of the governmental examination


1 in the course of the defense's viewing/hearing the record of any governmental examination.

2 8. AUSAs Douglas Sprague and Christine Wong are no longer members of the Taint  
3 Team. The new Taint Team may consult with AUSA Douglas Sprague, but only in  
4 connection with logistical, procedural, and administrative matters. The Taint Team may not  
5 discuss with AUSA Sprague, for example, any substantive issues regarding any examination of  
6 the defendant or the substance of any related documents, records, or information.

7 9. The terms of this firewall will apply only to this case.

8 **IT IS SO ORDERED.**

9 Dated: December 23, 2008

  
HONORABLE MAXINE M. CHESNEY  
UNITED STATES DISTRICT JUDGE  
NORTHERN DISTRICT OF CALIFORNIA